

NIH POLICY MANUAL

6012-1/26012-1 - ACQUISITION OF COMMERCIAL ITEMS

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1. **Explanation of Material Transmitted:** The purpose of this Manual Chapter is to familiarize the NIH contracting staff with the policies and procedures for acquiring commercial items. This Manual Chapter constitutes the training required under Section 8203 of Public Law 103-355, Federal Acquisition Streamlining Act of 1994. The purpose of this update is to incorporate various changes to the FAR that have taken place since the original issuance of this Manual Chapter.
2. **Filing Instructions:**

 Remove: NIH Manual Chapter 6012-1/26012-1, Acquisition of Commercial Items, dated 07/01/96
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3. **Distribution:** NIH Manual Mailing Keys F-401, F-404, and F-407

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A. Purpose:

By the definitions provided in Section [D.](#), many of the supplies and services acquired at the NIH, particularly those defined as Station Support, are now considered commercial items. The purpose of this Manual Chapter is to familiarize the NIH contracting staff with the policies and procedures for acquiring commercial items and to identify the various parts of the Federal Acquisition Regulation (FAR) that address

commercial item acquisition. In addition, this Manual Chapter constitutes the training required under Section 8203 of Public Law 103-355, Federal Acquisition Streamlining Act (FASA) of 1994. This update incorporates various changes to the FAR that have taken place since this Manual Chapter was originally issued.

B. Background:

Sections 8104 and 8203 of FASA created a preference for the acquisition of commercial items in both military and civilian procurements. To the maximum practicable extent, agencies must acquire commercial items to meet their needs. The FAR Part 12, which became effective October 1, 1995, with mandatory use becoming effective December 1, 1995, sets forth the new policies and procedures to be used, with the goal of adapting and adopting commercial practices where feasible. The Federal Acquisition Circulars (FACs) 97-03 and 97-04 provide changes to various FAR Parts pertaining to Commercial Items.

See Section [E.](#), Procedures, for a summarization of these changes.

C. Policy:

The FAR now establishes that all items/services meeting the FAR definition of "commercial" must be acquired in accordance with Part 12. The FAR Part 12 requires agencies to (1) conduct market research to determine whether commercial items or nondevelopmental items are available that could meet the agency's requirements; (2) acquire commercial items or nondevelopmental items when they are available to meet the needs of the agency; and (3) require prime contractors and subcontractors at all tiers to incorporate, to the maximum extent practicable, commercial items or nondevelopmental items as components of items supplied to the agency.

D. Definitions:

Under the FAR definition, "commercial items" include the following (full definition at FAR 2.101):

Items of a type that are customarily used for non-Governmental purposes and:

1. that have been sold, leased or licensed to the general public or have been offered for sale, license or lease to the general public; or
2. that evolved from the foregoing items through advancements in technology or performance and that are not yet available in the commercial marketplace but will be available in the commercial marketplace in time to satisfy the Government's delivery requirements; or
3. any items that would satisfy the criteria expressed above except for modifications of a type customarily available in the commercial marketplace or minor modifications of a type not customarily available in the commercial marketplace made to meet the Government's requirements; or
4. combinations of items meeting the requirements of any of the above definitions

that are of a type customarily combined and sold in combination to the general public; or

5. installation, maintenance, repair, training or other services if procured for support of an item in 1. through 4. above and that the contractor offers to the general public and the Federal Government at the same time and under similar terms and conditions using the same work force for services for the Federal Government as for the general public; or
6. services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed; or
7. any item or combination of items or services referred to in 1. through 6. above even if the item(s) or service is transferred between or among separate divisions, subdivisions, or affiliates of the contractor; or
8. a nondevelopmental item, if the procuring agency determines that the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple states or local Governments.

E. Procedures:

1. Application - The FAR 12.102 states that the procedures apply to all acquisitions of commercial items except:

- a. acquisitions at or below the micro-purchase threshold;
- b. acquisitions using an SF-44, "Purchase Order-Invoice-Voucher;"
- c. acquisitions made using imprest funds; or
- d. acquisitions made using a Government-wide commercial purchase card.

2. Additional Significant Requirements

- a. FAR Part 2 has been amended to incorporate definitions of "commercial item," "component," "commercial component" and "nondevelopmental item."
- b. FAR Part 5 has been revised to allow contracting officers to establish a reasonable solicitation response time for the acquisition of commercial items greater than \$25,000 based upon the specific circumstances of the individual acquisition. Please note, however, that the Contracting Officer may establish a shorter period for issuance of the solicitation. This applies to commercial items only as stated in FAR 5.203(a). A "Note 26" has been added and is required in any CBD synopsis for which commercial items cannot be required. (See Item f. for documentation requirement.) The text of Note 26 is provided in Appendix 5.

c. FAR 6.502 makes agency competition advocates responsible for promoting the acquisition of commercial items and challenging requirements that are stated in terms inconsistent with this objective. The Competition Advocate responsibilities have been redelegated to the Chief Contracting Officers, with authority for further redelegation to the Contracting Officers within their area of authority.

d. FAR 6.502 also requires agency competition advocates to review and report to the "agency" senior procurement executive on an annual basis on certain matters including actions taken to (1) acquire commercial items and (2) to effect new initiatives required to increase the acquisition of commercial items. Much of the information that will comprise this report will be collected from and be accessible through the Administrative Database and IMPAC II.

e. FAR Part 7, Acquisition Planning, removes the definition of "market survey" and requires an integrated effort of all personnel responsible for significant aspects of the acquisition to perform acquisition planning and market research for all acquisitions in order to acquire commercial items, or if unavailable, nondevelopmental items to the maximum extent practicable. Acquisition Plans must address the extent and results of the market research. (See f. below for details.)

f. FAR Part 10, Market Research, requires that market research be conducted prior to: (1) developing new requirement documents for an acquisition; (2) soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold; and (3) soliciting offers for acquisitions with an estimated value less than the simplified acquisition threshold when adequate information is not available and circumstances justify its cost.

The market research and its results shall be documented in the purchase order/contract file. The results shall indicate whether the item being acquired is/is not a "commercial item" or "nondevelopmental item." This information would be gleaned from the collection and analysis of information about capabilities within the market to satisfy agency needs. The extent of the market research to be conducted should be appropriate to the size and complexity of the acquisition (see FAR 10.002(e)).

It is envisioned that the conduct of the market research will be a team effort involving, on an as needed basis, technical, user, logistics and contracting staff. As necessary, this research must also include the possibility of modifying the agency requirement to permit the use of a commercial item. When commercial items can be used, the research must include the practices of the relevant industry segment; e.g., the normal warranties, packaging and financing. Industry publications, periodicals, vendor associations, marketing organizations, trade shows, etc., are all sources that can be used to implement market research requirements.

g. FAR Part 11 makes agencies responsible for defining their requirements by function, required performance, essential physical characteristics or other terms that encourage the use of commercial items. This requirement includes the

elimination of restrictive conditions or provisions.

h. FAR Part 12 contains the bulk of the requirements for the acquisition of commercial items. The FAR 12.102 requires that the policies in Part 12 be used in conjunction with FAR Parts 13, 14 and 15. However, FAR Part 12 takes precedence for the acquisition of commercial items.

(1) FAR 12.102 requires use of Part 12 for the purchase of commercial items over the micro- purchase threshold.

(2) FAR 12.204 prescribes the use of the SF-1449, Solicitation/Contract/Order for Commercial Items, in soliciting and making awards for commercial items. This form will be used in lieu of any other prescribed contract form for these acquisitions. The SF-1449 also allows documenting the receipt, inspection and acceptance of commercial items. For simplified acquisitions, the SF-1449 is nonmandatory, but is encouraged. Therefore, the NIH may continue to utilize current versions of RFQ and purchase order forms in the Administrative Database. Terms and conditions for use with purchase orders for commercial items have been updated to comply with the requirements of FAR Part 12.

(3) FAR 12.205 permits firms to offer more than one item in response to a solicitation for commercial items. The Contracting Officer must evaluate each item to determine the best value purchase in accordance with the specifications.

(4) FAR 12.206 indicates that past performance should be an important element of every evaluation and contract award for commercial items.

(5) FAR 12.207 and 16.201 prescribe the use of only firm-fixed-price or fixed-price with economic price adjustment contracts for commercial item acquisitions, and FAR 16.301-3(b) specifically prohibits the use of cost-reimbursement contracts for these items. Indefinite delivery contracts may be used for commercial items when the prices are established on a firm-fixed-price or fixed-price with economic adjustment basis.

(6) FAR 12.214 states that the Cost Accounting Standards will not apply to commercial item acquisitions for fixed-priced or fixed-price with economic price adjustment.

(7) FAR 12.3 establishes an abbreviated set of requirements for acquisitions of commercial items, i.e., the number of provisions and clauses is limited. The clauses and provisions are standard. If tailoring is performed, it shall be by addenda to the solicitation and contract. Tailoring that is inconsistent with customary commercial practices requires formal waiver approval (FAR 12.302(c)). It should be noted that while all of the provisions at FAR 52.212-1, "Instructions to Offerors-Commercial Items," may be tailored, six of the nineteen terms and conditions in Clause 52.212-4, "Contract Terms and Conditions-Commercial Items," cannot be tailored.

(8) FAR 12.303 prescribes a simplified solicitation and contract format to use in acquiring commercial items. The Uniform Contract Format is not required.

(9) FAR 12.403 deals with termination. Termination of a contract for commercial items involves the procedures prescribed in FAR 12.403 and differs from the termination process prescribed in FAR Part 49. Termination for Default is replaced with the different concept of Termination for Cause and Termination for the Government's Convenience.

(10) FAR 12.404 addresses implied and express warranties that are used in the commercial marketplace.

(11) FAR 12.503 lists certain laws that are not applicable to the acquisition of commercial items.

(12) FAR 12.504 lists certain laws that are not applicable to subcontracts for the acquisition of commercial items.

(13) FAR 12.602 provides for a streamlined evaluation of offers for commercial items by permitting evaluations and criteria to be tailored to the complexity of the specific acquisition.

(14) FAR 12.603 authorizes the use of a combined CBD synopsis/solicitation procedure for relatively simple commercial acquisitions. The resulting synopsis announcement also solicits proposals and constitutes the only solicitation issued. (See Appendix 3, for a sample Synopsis/RFP and Appendix 4, for the resultant contract.)

i. FAR 15.403-1(c)(3) states that any acquisition for an item that meets the commercial item definition in FAR 2.101, or any modification, as defined in paragraph (c)(1) or (2) of that definition, that does not change the item from a commercial item to a noncommercial item, is exempt from the requirement for cost or pricing data.

j. FAR 15.403-3(c) states that requests for sales data relating to commercial items shall be limited to data for the same or similar items during a relevant time period. Also, the Contracting Officer shall, to the maximum extent practicable, limit the scope of the request for information relating to commercial items to include only information that is in the form regularly maintained by the offeror as part of its commercial operations. Information obtained relating to commercial items that is exempt from disclosure under FAR 24.202(a) or the Freedom of Information Act (5 U.S.C. 552(b)) shall not be disclosed outside the Government.

k. FAR Part 32.2 provides that commercial item financing may be offered, provided the following preconditions are satisfied:

- (1) the financing is in the best interest of the Government;
- (2) the terms and conditions are appropriate or customary in the commercial marketplace;
- (3) the advance payments do not exceed 15 percent of the contract price until some contract work has been performed;
- (4) the contract price exceeds the simplified acquisition threshold;
- (5) adequate security is obtained;
- (6) the contract is awarded on the basis of competitive procedures, or if only one offer is solicited, adequate consideration is obtained; and
- (7) the Contracting Officer obtains concurrence from the payment office concerning liquidation provisions when required by FAR 32.206(e).

l. FAR 44.400 and the Clause at FAR 52.244-6 establish an abbreviated set of provisions and clauses that the contractor must incorporate in its subcontracts for commercial items. Only the clauses identified in FAR 52.244-6 are required to be in subcontracts for commercial items or commercial components. The FAR Subpart 44.400 also requires the contractor to require subcontractors at all tiers to make use of commercial items to the maximum practicable extent.

m. The Government lacks its traditional, unilateral change authority. The Clause at FAR 52.212-4 requires that changes in the terms and conditions of contracts for commercial items be made with the written agreement of both parties.

n. FAR 46.102 and FAR 46.202-1 require that the Government rely on the contractor's existing quality assurance system unless customary market practices for the item being

acquired permit in-process inspection. Normally, the Government cannot require special inspection and testing.

F. Records Retention and Disposal:

records (e-mail and non-email) pertaining to this Manual Chapter must be retained and disposed of under the authority of NIH Manual [1743](#), "Keeping and Destroying Records, Appendix 1," "NIH Records Control Schedule," Item 2600-A-4, Routine Procurement S.

F.1 E-Mail Messages: The NIH e-mail messages (messages, including attachments, that are created on the NIH computer systems or transmitted over NIH networks) that are evidence of the activities of the agency or have informational value are considered Federal records. These records must be maintained in accordance with current NIH Records management guidelines. Contact your Institute/Center (IC) Records Officer for additional information.

E-mail messages are considered Government property, and if requested for a legitimate government purpose, must be provided to the requester. Employees' supervisors, NIH staff conducting official reviews or investigations and the Office of Inspector General may request access to or copies of the e-mail messages. E-mail messages must also be provided to members of Congress or Congressional Committees if requested and are subject to Freedom of Information Act requests. Since most e-mail systems have back-up files that are sometimes retained for significant periods of time, e-mail messages and attachments may be retrievable from a back-up file after they have been deleted from an individual's computer. The back-up files are subject to the same requests as the original messages.

Management Controls:

The purpose of this Manual Chapter is to familiarize and update the NIH contracting staff with the policies and procedures for acquiring commercial items. This Manual Chapter substitutes the training required under Section 8203 of Public Law 103-355, Federal Acquisition Streamlining Act of 1994.

The office responsible for reviewing management controls in relation to this Chapter: Division of Acquisition Policy and Evaluation (DAPE), Office of Contracts Management (OCM).

Frequency of Review (in years): On-going review.

Method of Review: The DAPE/OCM will maintain appropriate oversight through review of IC presolicitation and preaward contract files conducted by the NIH Board of Contract Awards. The NIH Board of Contract Awards reviews a statistically valid percentage of contract actions from each IC. Issues identified by the NIH Board of Contract Awards are provided to the IC for corrective action. When repetitive issues are identified, these are brought to the attention of the Acquisition Management Committee, which is responsible for addressing and resolving common acquisition concerns. In addition, the Principal Official Responsible for Acquisition (PORA) is routinely apprised of any difficulties in the IC implementation of policy. Depending on the nature and extent

he problem, the PORA may recommend additional review, policy guidance and/or ning of the contract staff.

pendix 1 - Potential Advantages of Commercial Acquisitions:

he applicability of a number of laws (e.g., Walsh- Healey, Drug Free Workplace) has n eliminated for contractors and subcontractors, which makes the contract more like a mmercial agreement.

AR 12.205 permits the use of existing product literature from offerors in lieu of unique nical proposals.

AR 12.205 also allows Contracting Officers to establish proposal response times rter than 30 days.

AR 12.302 allows Contracting Officers to tailor some of the prescribed terms and ditions to the applicable market conditions.

ontracts for commercial items require fewer terms and conditions. This should plify the acquisition process and enable awards to be made in less time.

he instructions in the provision at FAR 52.212-1 and a majority of the terms and ditions in the Clause 52.212-4 may be tailored by the Contracting Officer to ommodate special situations.

he provision at FAR 52.212-2 provides potential standard contract wording regarding evaluation of offers.

A more relaxed Termination for Convenience process is prescribed (see FAR 52.212-4), , the contractor does not have to submit a formal settlement plan and the Government y not audit the contractor's records.

award without discussions is envisioned (see FAR 52.212-1(g)). This will considerably rten the procurement lead time.

pendix 2 - Potential Disadvantages of Commercial Acquisitions:

When an acquisition is made using the commercial acquisition procedures, the vernment must first determine the practices of the relevant commercial marketplace arding warranties, packaging, financing, etc.

ince purchasing agents and Contract Specialists will not be familiar with the mmercial market place for all of the items to be procured, the market research process ld encompass a significant amount of their time (although market research should be a n effort with program staff playing a major role).

n general, solicitations/contracts for commercial items cannot contain any terms and ditions except the limited ones provided in the Clauses at FAR 52.212-1, 52.212-3, 212-4 and 52.212-5. The FAR 12.301 requires that any additional provisions or clauses based on agency-specific statutes or approved by the agency senior procurement

cial.

FAR 12.207 states that contracts for commercial items must be fixed-price or fixed-price with economic price adjustment. Contracting Officers can no longer acquire commercial items on a cost-reimbursement basis. The FAR 2.101(f) defines services ordered and sold competitively based on catalog or market prices for specific tasks performed under standard commercial terms and conditions as commercial items. This FAR subpart specifically excludes services sold based on an hourly rate without an established catalog or market price for the specific service performed. In summary, if a service is not commercially available and priced by a task to be performed using hourly rates, it cannot be considered a commercial item and would then be acquired using normal acquisition procedures.

FAR 12.211 indicates that the Government's rights to technical data are limited to the rights customarily provided to the commercial customers (unless the Government acquires a commercial item contractor negotiates greater rights).

FAR 12.212 indicates that the Government's rights to software technical information and documentation are limited to the rights provided to commercial customers.

FAR 32.2 authorizes the Government to provide special financing, such as interim payments or advance payments, for commercial acquisitions above the simplified acquisition threshold. Special financing can impose significant administrative burdens on the Government. While the Government is not required to provide such financing, some vendors may come to expect it as an entitlement and contracting staffs must become familiar with commercial financing terms and practices.

Appendix 3 - Combined Synopsis:

This is a synopsis/solicitation for commercial items prepared in accordance with the format in FAR subpart 12.6, as supplemented with additional information included in this notice. This announcement constitutes the only solicitation and proposals are hereby being invited. Solicitation NIH-AG-97-05 is a Request for Proposal. The duration of the proposed firm fixed price contract is one year with four (04) successive one year option periods. The solicitation document and incorporated provisions and clauses are those in effect through Federal Acquisition Circular 90-42. The Standard Industrial Classification Code is 8731 and the business size is 500 employees. This is a small business set aside. SECTION C: The objective of this project is to provide an independent surveillance of the health status of hybrid rats maintained in contractor facilities for the nine-year hybrid rat colonies. The Project Officer will select animals to be shipped from the National Institute on Aging (NIA) colonies to an independent laboratory for health and pathology evaluation on the inventory maintained in the NIA Resource Development Office which effectively samples the range of ages and holding rooms that characterize the colonies. Specifically, Contractor shall perform clinical evaluation of rats selected by the Project Officer from NIA colonies and shipped (at no cost to the contractor) on a quarterly basis. Total numbers of rats anticipated on an annual basis are 100, 100, 150, 200 and 150 for years 1 through 5 respectively. Animals will be identified as to which barrier and room they were housed. In the event of an apparent outbreak of disease, or serious question regarding the

With status of a group of animals, the contractor shall immediately contact the Project Officer by telephone and follow-up with written notification. This schedule may be altered after consultation between the Project Officer, the Contracting Officer, the Colony Contractor, and the Monitoring Contractor (this contract) in such an event. Upon receipt of animals from the Colony Contractor, the Monitoring Contractor shall divide each quarterly shipment of 25 animals from each colony contract into two (2) groups, the one group consisting of 19 animals representing each barrier and room will be tested for agents listed below under quarterly testing profile. The other group of 6 animals will be tested for the agents listed under quarterly profile plus those agents listed under comprehensive profile. On an annual basis, this will result in 100% of the animals receiving the quarterly profile and approximately 25% of those animals will receive the comprehensive profile.

Specifically, the contractor shall: (i) Describe general conditions of all animals, weight, and any visible lesions or symptomatology; and (ii) Conduct a gross pathology on all animals using procedures that will maximize the chance for detection of the agents listed below. 1) Gross pathologic observations of all animals. 2.(a) Agents for Quarterly Testing Profile (all animals) - SEROLOGY: Rat paroviruses, PVM, Sendai, Rat coronaviruses; MICROBIOLOGY: Mycoplasma pulmonis, Corynebacterium kutscheri, B. p. pneumoniae, Pseudomonas sp., Salmonella enteritidis; PARASITOLOGY: Trichinella spiralis, Trichinella muris, Giardia sp., Cryptosporidium sp., Syphacia sp., Hymenolepis sp., etc.; HISTOPATHOLOGY: GI tract (Small intestine, Cecum, Colon), Respiratory Tract (nasal passages, Middle ear, Lungs, Trachea). 2.(b) Agents for Quarterly Testing Comprehensive Profile (25% of animals) - SEROLOGY: Reoviruses, Adenoviruses, EV, Hantaviruses; MICROBIOLOGY: CAR bacillus (histopathology), Pasteurella pneumotropica, Bacillus piliformis (histopathology), Clostridium botulinum (4280); HISTOPATHOLOGY: Liver, Spleen, Thymus, Heart, Kidney, Reproductive organs

(Vagina, Uterus, Testes, Prepuce), Brain, Skin, Salivary Gland, Harderian Gland.

SECTION D: All deliverables required under this contract shall be packaged, marked and shipped in accordance with Government specifications. The Contractor shall guarantee that required materials shall be delivered in immediate usable and acceptable condition.

SECTION E: INSPECTION AND ACCEPTANCE - The deliverables shall be inspected and accepted at destination by the NIH Project Officer. SECTION F: Required Reports/Deliverables - One copy of the reports below shall be submitted to the Project Officer, and one copy of items (b) and (c) shall be submitted to the Contracting Officer. (a) Raw data expected to be generated from these evaluations will be gross pathology, histopathology, and virology data on each individual animal submitted for evaluation. Data will be collected on forms supplied by the Contractor in a format approved by the Project Officer. Copies of raw data forms for each animal, together with a summary report of findings shall be delivered to the Project Officer within 30 calendar days from the date the animals are submitted for evaluation. The Contractor will be expected to retain at least one copy of each raw data form for use in preparation of an annual report. (b) The original annual report shall be delivered to the Project Officer and one copy of the annual report will be delivered to the Contracting Officer within 30 calendar days of the completion of each project year. This report shall consist of a summary of the number, strain and sex of animals evaluated, a tabulation of the results of the evaluations, and a Contractor's comment regarding the significance of these results in terms of the success of colony

management practices and the health of colony animals. (c) The original final report shall be delivered to the Project Officer and one copy of the final report shall be delivered to the Contracting Officer. The final report shall consist of the work performed and results obtained for the entire contract period of performance. The final report is due upon completion of the contract. (d) The Contractor shall submit a summary (not to exceed 200 words) of salient results achieved during the performance of the contract. The report of final results is due upon completion of the contract.

The following clauses are incorporated into the solicitation: FAR 52.212-1

INSTRUCTIONS TO

OFFERORS-COMMERCIAL ITEMS; FAR 52.212-2 EVALUATION-COMMERCIAL

ITEMS. The Government shall award a contract resulting from this solicitation to the responsible offeror whose offer conforming to this solicitation will be most advantageous to the Government, price and other factors considered. The following factors, listed in order of relative importance, shall be used to evaluate offers: 1. Experience: (a) Documented evidence of experience in pathological, microbiological and serological assessment of health status of rats, with specific experience in tests required in this workscope. (b) A demonstrated knowledge of what tests should be performed on what specific tissues in order to apprise the Project Officer of the current level of colony health. Evidence of knowledge specific to pathological assessment and health status of aged rats. Specific evidence (e.g. publication, training, prior experience) specific to aged rats should be provided; 2. Facilities: Suitability of facilities for short-term maintenance of animals to be evaluated prior to evaluation. Must detail effective system to protect these animals from contamination by other animals passing through facility. Must demonstrate competence in laboratory quality control through such measures as: copies of lab protocols, quality control procedures, lists of reference reagents, and history of reliability; Awareness: A demonstrated awareness of diseases, degenerative problems, and other conditions likely to be observed in the conduct of this project and the significance of these observations to the general health status of the colonies being monitored; and 4. Price: Price is to be proposed on a cost per animal basis. The technical proposal shall receive equal amount consideration in making an award under this solicitation.; Offeror must include completed copy of FAR 52.212-3 OFFEROR REPRESENTATIONS AND

CERTIFICATIONS-COMMERCIAL ITEMS with its offer; FAR

52.212-4 CONTRACT TERMS AND CONDITIONS-COMMERCIAL ITEMS; FAR

52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT

STATUTES OR EXECUTIVE ORDERS-COMMERCIAL ITEMS, applies to this

solicitation with following additional clauses: 52.203-6 RESTRICTIONS ON

DISPOSAL OF CONTRACTOR SALES TO THE GOVERNMENT with ALTERNATE I, 52.203-10

PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY, 52.219-8

UTILIZATION OF SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED

BUSINESS CONCERNS, 52.219-14 LIMITATION ON SUBCONTRACTING,

52.222-26 EQUAL OPPORTUNITY, 52.222-35 AFFIRMATIVE ACTION FOR

SPECIAL DISABLED AND VIETNAM ERA VETERANS, 52.222-36 AFFIRMATIVE

ACTION FOR HANDICAPPED WORKERS, 52.222-37

EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS

OF THE VIETNAM ERA, and 52.225-3 BUY AMERICAN ACT. The following

additional clauses apply to this acquisition: FAR 52.215-41 REQUIREMENTS FOR

ST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING TA, 52.215-43 AUDIT-COMMERCIAL ITEMS, 52.217-5 EVALUATION OF TIONS, and PHS 352.280-2 CARE OF LIVE VERTEBRATE ANIMALS. Direct all stions or inquiries referencing RFP No. NIH-AG-97-05, by fax (301) 402-0178 or ne (301) 496-4487 to Mr. Jonathan Ferguson. Including originals, submit in writing, (06) copies of the technical proposal and four (04) business proposals no later than ty (30) calendar days after publication of this notice, 4:00 p.m. local time. Please erence the solicitation number on proposals. If using U.S. Postal Service, send proposals National Institutes of Health, Division of Research Contracts, OCM, 6100 Executive d., Room 6E01, MSC 7540, Bethesda, MD 20892-7540. If using delivery service or d-delivering, send proposals to: National Institutes of Health, Division of Research tracts, OCM, 6100 Executive Blvd., Room 6E01, Rockville, MD 20852.

pendix 4 -

**R Clause 52.212-4 CONTRACT TERMS AND CONDITIONS -
MMERCIAL ITEMS (MAY 1997):**

te: Appendix 4, page 1 only is not available on-line.]

Inspection /Acceptance. The Contractor shall only tender for acceptance those items : conform to the requirements of this contract. The Government reserves the right to ect or test any supplies or services that have been tendered for acceptance. The vernment may require repair or replacement of nonconforming supplies or erformance of nonconforming services at no increase in contract price. The vernment must exercise its post-acceptance rights (1) within a reasonable time after the ect was discovered or should have been discovered; and (2) before any substantial nge occurs in the condition of the item, unless the change is due to the defect in the n.

Assignment. The Contractor or its assignee's rights to be paid amounts due as a result erformance of this contract, may be assigned to a bank, trust company, or other ncing institution, including any Federal lending agency in accordance with the ignment of Claims Act (31 U.S.C. 3727).

Changes. Changes in the terms and conditions of this contract may be made only by iten agreement of the parties.

Disputes. This contract is subject to the Contract Disputes Act of 1978, as amended (41 .C. 601-613). Failure of the parties to this contract to reach agreement on any request equitable adjustment, claim, appeal or action arising under or relating to this contract ll be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, ch is incorporated herein by reference. The Contractor shall proceed diligently with orformance of this contract, pending final resolution of any dispute arising under the tract.

Definitions. The clause at FAR 52.202-1, Definitions, is incorporated herein by rence.

Excusable delays. The Contractor shall be liable for default unless nonperformance is

sed by an occurrence beyond the reasonable control of the Contractor and without its
lt or negligence such as, acts of God or the public enemy, acts of the Government in
er its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions,
kes, unusually severe weather, and delays of common carriers. The Contractor shall
ify the Contracting Officer in writing as soon as it is reasonably possible after the
mmencement of any excusable delay, setting forth the full particulars in connection
ewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly
e written notice to the Contracting Officer of the cessation of such occurrence.

Invoice. The Contractor shall submit an original invoice and three copies (or electronic
oice, if authorized), to the address designated in the contract to receive invoices. An
oice must include--

Name and address of the Contractor;

Invoice date;

Contract number, contract line item number and, if applicable, the order number;

Description, quantity, unit of measure, unit price and extended price of the items
vered;

Shipping number and date of shipment including the bill of lading number and weight
shipment if shipped on Government bill of lading;

Terms of any prompt payment discount offered;

Name and address of official to whom payment is to be sent; and

Name, title, and phone number of person to be notified in event of defective invoice.

oices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and
oice of Management and Budget (OMB) Circular A- 125, Prompt Payment. Contractors
encouraged to
gn an identification number to each invoice.

Patent indemnity. The Contractor shall indemnify the Government and its officers,
ployees and agents against liability, including costs, for actual or alleged direct or
tributory infringement of, or inducement to infringe, any United States or foreign
ent, trademark or copyright, arising out of the performance of this contract, provided
Contractor is reasonably notified of such claims and proceedings.

Payment. Payment shall be made for items accepted by the Government that have been
vered to the delivery destinations set forth in this contract. The Government will make
ment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of
nagement and Budget (OMB) Circular A- 125, Prompt Payment. Unless otherwise
vided by an addendum to this contract, the Government shall make payment in
ordance with the clause at FAR 52.232-33, Mandatory Information for Electronic
ids Transfer Payment, which is incorporated by reference. In connection with any
ount offered for early payment, time shall be computed from the date of the invoice.

the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

Risk of loss. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and then shall pass to the Government upon:

Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

Taxes. The contract price includes all applicable Federal, State, and local taxes and fees.

Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government are being incurred by its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all damages and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

Title. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

Limitation of liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the Government for consequential damages resulting

n any defect or deficiencies in accepted items.

Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

Compliance with laws unique to Government contracts. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C 327, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 251 related to whistle blower protections; and 49 U.S.C 18, Fly American.

Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order: (1) the schedule of supplies/services; (2) the Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause; (3) the clause at 212-5; (4) addenda to this solicitation or contract, including any license agreements for computer software; (5) solicitation provisions if this is a solicitation; (6) other paragraphs of this clause; (7) the Standard Form 1449; (8) other documents, exhibits, and attachments; (9) the specification.

end of clause)

Addendum 1 to FAR Clause 52.212-4 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (OCTOBER 1995)

The following are additional terms and conditions necessary for the performance of this contract.

PRICES

On delivery and acceptance by the Contracting Officer and Project Officer of the primary statement of the significance of findings and the raw data forms for each quarterly shipment specified in Addendum 1. Item 4., REPORTING REQUIREMENTS of this contract and a properly prepared invoice, the Government shall pay to the Contractor unit prices set forth below:

Description of Service	Quantity	Unit Price Per Animal
Clinical Profile	76	\$
Comprehensive file in addition to the Clinical Profile	24	\$

ADVANCE UNDERSTANDINGS

It is hereby agreed and understood that the contractor shall be paid on a per rat basis. If

re than 100 rats are monitored during the contract period, the total amount of the tract shall increase proportionately. If less than 100 rats are monitored, the total amount he contract shall decrease proportionately.

OPTION PRICES

Government reserves the right to exercise one or more options under this contract in accordance with FAR clause 52.217-7, OPTION FOR INCREASED QUANTITY - SEPARATELY PRICED LINE ITEM (MAR 1989), incorporated herein, to require the services in Addendum 3, STATEMENT OF WORK for additional period(s) of 12 months duration. The total performance period of the basic contract and all options shall not exceed five years.

Contracting Officer may exercise this option for additional services by giving written notice to the Contractor at least 60 calendar days prior to the expiration date of the contract, as extended by any previous option exercises. This notification shall not obligate Government to exercise the option. The Contracting Officer may unilaterally exercise option. The option shall be valid only during the period indicated.

When option exercised hereunder shall extend the period of performance an additional 12 months at the unit prices established and set forth below for each such option period.

Option 2:

100 rats (Clinical Profile) @ \$
100 rats (Comprehensive Profile) @ \$

\$

Option 3:

100 rats (Clinical Profile) @ \$
100 rats (Comprehensive Profile) @ \$

\$

Option 4:

100 rats (Clinical Profile) @ \$
100 rats (Comprehensive Profile) @ \$

\$

Option 5:

100 rats (Clinical Profile) @ \$
100 rats (Comprehensive Profile) @ \$

\$

REPORTING REQUIREMENTS

: Contractor shall prepare and submit the following reports in the manner stated below:

Evaluation Reports

: data expected to be generated from these evaluations will be gross pathology, ophthalmology, and virology data on each individual animal submitted for evaluation. Data will be collected on forms supplied by the Contractor in a format approved by the Project Officer. Copies of raw data forms for each animal, together with a summary report of findings shall be delivered to the Project Officer within 30 calendar days from the date the animals are submitted for evaluation. The Contractor will be expected to retain at least one copy of each raw data form for use in preparation of an annual report.

Annual Progress Reports

: The annual report shall consist of a summary of the number, strain and sex of the animals evaluated, a tabulation of the results of the evaluations, and a Contractor's statement regarding the significance of these results in terms of the success of colony management practices and the health of colony animals for the period covered. This report shall be delivered to the Government within 30 calendar days after the end of the contract year. An annual report will not be required for the period when the final report is due.

Final Report

: The final report shall include a summation of the work performed and results obtained for the entire contract period of performance. This report shall be in sufficient detail to describe comprehensively the results achieved. A final report is due on or before the expiration date of the contract.

Summary of Salient Results

: Contractor shall submit a summary (not to exceed 200 words) of salient results achieved during the performance of the contract. The report of salient results is due on or before the expiration date of the contract.

: Original reports shall be delivered to the Project Officer and one copy of items (B) and (C) shall be delivered to the Contracting Officer at the following addresses:

Witt G. Hazzard, Ph.D.
Chief, Office of Resource Development
Biology of Aging Program, NIA
National Institutes of Health
Gateway Bldg., Room 2C231
Bethesda, Maryland 20892

Contracting Officer
Division of Research Contracts, OCM
National Institutes of Health
100 Executive Blvd., Room 6E01 MSC 7540
Bethesda, Maryland 20892-7540

KEY PERSONNEL

uant to the Key Personnel clause incorporated in this contract, the following individual
onsidered to be essential to the work being performed hereunder:

ME, TITLE (To Be Determined)

SPECIAL CONTRACT REQUIREMENTS

HUMAN SUBJECTS

hereby understood and agreed that research involving human subjects shall not be
ducted under this contract, and that no material developed, modified, or delivered by or
he Government under this contract, or any subsequent modification of such material,
l be used by the Contractor or made available by the Contractor for use by anyone other
n the Government, for experimental or therapeutic use involving humans without the
r written approval of the Contracting Officer.

INTRODUCTION OF RODENTS AND RODENT PRODUCTS

rodent or rodent product shall be delivered into the NIH environment directly, or
ough collaborative research or holding facilities under contract to NIH except by permit.
ect shipments to NIH from a commercial colony will be considered exempt. Non-
mpt sources must be approved by permit issued through the National Center for
earch Resources (NCRR). The permit must be obtained by the Contractor prior to the
ment to NIH of the rodents and/or rodent products.

: Contractor must be sure that this permit exists and is current before transferring
ents or rodent products into the NIH environment. Refusal or negligence to do so will
onsidered a material breach of contract and may be treated as any other such material
ach. Applications for permits should be submitted not less than 30 days prior to
pping date to: NIH Veterinary Resources Branch (VRP), National Center for Research
ources (NCRR), Scientific Services Branch, Laboratory Sciences Section, Building
A, Room 106, 28 LIBRARY DR MSC 5210, BETHESDA MD 20892-5210, (301) 496-
3.

ANIMAL WELFARE ASSURANCE

: Contractor shall obtain, prior to the start of any work under this contract, an approved
mal Welfare Assurance from the Office of Protection from Research Risks (OPRR),
ice of the Director, NIH, as required by Section I-43-30 of the Public Health Service
icy on Humane Care and Use of Laboratory Animals. The Contractor shall maintain
h assurance for the duration of this contract, and any subcontractors performing work
er this contract involving the use of animals shall also obtain and maintain an approved
mal Welfare Assurance.

endum 2 to FAR Clause 52.212-4 CONTRACT TERMS AND CONDITIONS -
MMERCIAL ITEMS (OCTOBER 1995)

Following is a continuation of paragraphs (a) Inspection/Acceptance, (c) Changes, and Invoice.

Inspection/Acceptance - The following paragraph shall be included as follows:

For the purpose of inspection/acceptance, the Project Officer is the authorized representative of the Contracting Officer. Inspection and acceptance will be performed at the National Institutes of Health, Bethesda, Maryland 20892.

Changes - The following paragraph shall be included as follows:

The Contracting Officer is the only person with authority to act as agent of the Government under this contract. Only the Contracting Officer has authority to: (1) direct or negotiate any changes in the Statement of Work; (2) modify or extend the period of performance; (3) change the delivery schedule; (4) authorize reimbursement to the Contractor any costs incurred during the performance of this contract; or (5) otherwise change any terms and conditions of this contract.

Invoice - The following paragraphs shall be included:

Invoices shall be submitted concurrently as follows:

An original and two copies to the following designated payment office:

National Institutes of Health
Office of Financial Management
Chief, Contracts Section
Building 31, Room B1B58
CENTER DR MSC 2045
Bethesda, Maryland 20892-2045

Three copies to the following approving officer:

Contracting Officer
Division of Research Contracts, OCM
National Institutes of Health
100 Executive Blvd., Room 6E01, MSC 7540
Bethesda, Maryland 20892-7540

Inquiries regarding payment of invoices should be directed to the designated payment office, attention of Chief, Contracts Section, (301) 496-6452.

Appendix 3 to FAR Clause 52.212-4 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (OCTOBER 1995)

Following is a continuation of the description of the services being acquired.

STATEMENT OF WORK

Independently and not as an agent of the Government, the Contractor shall furnish all

necessary services, qualified personnel, material, equipment, and facilities, not otherwise provided by the Government as needed to perform the Statement of Work (SOW):

Background

The objective of this project is to provide an independent surveillance of the health status of hybrid rats maintained in contractor facilities for the nine-year hybrid rat colonies. The Project Officer will select animals to be shipped from the National Institute on Aging (NIA) colonies to an independent laboratory for health and pathology evaluation from the inventory maintained in the NIA Resource Development Office which effectively samples a range of ages and holding rooms that characterize the colonies.

Work To Be Performed

Specifically, the Contractor shall perform clinical evaluation of rats selected by the Project Officer from the NIA colonies and shipped (at no cost to the contractor) on a quarterly basis. Total numbers of rats anticipated on an annual basis are 100, 100, 150, 200 and 150 years 1 through 5 respectively. Animals will be identified as to which barrier and room they were housed. In the event of an apparent outbreak of disease, or serious question regarding the health status of a group of animals, the contractor shall immediately contact the Project Officer by telephone and follow-up with written notification. This schedule may be altered after consultation between the Project Officer, the Contracting Officer, the primary Contractor, and the Monitoring Contractor (this contract) in such an event.

On receipt of animals from the Colony Contractor, the Monitoring Contractor shall divide each quarterly shipment of 25 animals from each colony contract into two (2) groups, the one group consisting of 19 animals representing each barrier and room will be tested for agents listed below under quarterly testing profile. The other group of 6 animals will be tested for the agents listed under quarterly profile plus those agents listed under comprehensive profile. On an annual basis, this will result in 100% of the animals receiving the quarterly profile while approximately 25% of those animals will receive the comprehensive profile.

Specifically, the contractor shall: (i) Describe general conditions of all animals, weight, and any visible lesions or symptomatology; and (ii) Conduct a gross pathology on all animals using procedures that will maximize the chance for detection of the agents listed in the SOW.

Gross pathologic observations of all animals.

Agents for Quarterly Testing Clinical Profile (all animals) - SEROLOGY: Rat coronaviruses, PVM, Sendai, Rat coronaviruses; MICROBIOLOGY: Mycoplasma pulmonis, Mycobacterium kutscheri, Strep. pneumoniae, Pseudomonas sp., Salmonella enteritidis; PARASITOLOGY: Spironucleus muris, Giardia sp., Cryptosporidium sp., Syphacia sp., Hemonolepis sp., Mites; HISTOPATHOLOGY: GI tract (Small intestine, Cecum, Colon), Respiratory Tract (Nasal passages, Middle ear, Lungs, Trachea).

Agents for Quarterly Testing Comprehensive Profile (25% of animals) - SEROLOGY:

viruses, Adenoviruses, TMEV, Hantaviruses; MICROBIOLOGY: CAR bacillus (histopathology), *Pasteurella pneumotropica*, *Bacillus piliformis* (histopathology), *Clostridium botulinum* (4280); HISTOPATHOLOGY: Liver, Spleen, Thymus, Heart, Kidney, Reproductive organs (Ovaries, Uterus, Testes, Prepuce), Brain, Skin, Salivary Gland, Adrenal Gland.

R Clause 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO
PLEMENT STATUTES OR EXECUTIVE ORDERS - COMMERCIAL ITEMS
NE 1998)

The Contractor agrees to comply with the following FAR clauses, which are incorporated in this contract by reference, to implement provisions of law or executive orders applicable to acquisitions of Commercial items:

52.222-3, Convict Labor (E.O. 11755); and
52.233-3, Protest After Award (31 U.S.C 3553).

The Contractor agrees to comply with the FAR clauses in this paragraph (b) which the contracting officer has indicated as being incorporated in this contract by reference to the provisions of law or executive orders applicable to acquisitions of commercial items or components:

Contracting Officer shall check as appropriate.)

- 1) 52.203-6, Restrictions on Subcontractor Sales to the Government, with Alternate I U.S.C. 253g and 10 U.S.C. 2402).
- 2) 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity (41 U.S.C. 423).
- 3) 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (15 U.S.C. 637 (d)(2) and (3)).
- 4) 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Contracting Plan (15 U.S.C. 637 (d)(4)).
- 5) 52.219-14, Limitation on Subcontracting (15 U.S.C. 637(a)(14)).
- 6) 52.222-26, Equal Opportunity (E.O. 11246).
- 7) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212).
- 8) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).
- 9) 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).
- 10) 52.225-3, Buy American Act - Supplies (41 U.S.C. 10).
- 11) 52.225-9, Trade Agreements Act (Deviation) (41 U.S.C. 10, 19 U.S.C. 2501-2582).

) [Reserved]

) 52.225-18, European Union Sanction for End Products (E.O. 12849).

) 52.225-19, European Union Sanction for Services (E.O. 12849).

) (I) 52.225-21, Buy American Act - North American Free Trade Agreement
Implementation Act - Balance of Payments Program (41 U.S.C 10, Pub. L. 103-187).

(ii) Alternate I of 52.225-21

) 52.239-1, Privacy or Security Safeguards 5U.S.C. 552a).

) 52.247-64, Preference for Privately Owned U.S. Flag Commercial Vessels (46 U.S.C.
1).

The Contractor agrees to comply with the FAR clauses in this paragraph (c), applicable
commercial services, which the Contracting Officer has indicated as being incorporated
in this contract by reference to implement provisions of law or executive order, applicable
acquisitions of commercial items or components:

(Contracting Officer checks as appropriate.)

52.222-41, Service Contract Act of 1965, As amended (41 U.S.C. 351, et seq.).

52.222-42, Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41
U.S.C. 351, et seq.).

52.222-43, Fair Labor Standards Act and Service Contract Act - Price Adjustment
(Multiple Year and Option Contracts) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

52.222-44, Fair Labor Standards Act and Service Contract Act - Price Adjustment (29
U.S.C. 206 and 41 U.S.C. 351, et seq.).

52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor
Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41
U.S.C. 351, et seq.).

Comptroller General Examination of Record. The Contractor agrees to comply with the
visions of this paragraph (d) if this contract was awarded using other than sealed bid, is
in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-
Audit and Records-Negotiation.

The Comptroller General of the United States, or an authorized representative of the
Comptroller General, shall have access to and right to examine any of the Contractor's
directly pertinent records involving transactions related to this contract.

The Contractor shall make available at its offices at all reasonable times the records,
materials, and other evidence for examination, audit, or reproduction, until 3 years after
final payment under this contract or for any shorter period specified in FAR Subpart 4.7,
Contractor Records Retention, of the other clauses of this contract. If this contract is

completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

Notwithstanding, the requirements of the clauses in paragraphs (a), (b), (c), (d) of this clause, the Contractor is not required to include any FAR clause, other than those listed below (and as may be required by an addenda to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components --

52.222-26, Equal Opportunity (E.O. 11246);

52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 2012(a));

52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793); and

52.247-64, Preference for Privately-Owned U.S. Flag Commercial Vessels (46 U.S.C. 1901)(flow down not required for subcontracts awarded beginning May 1, 1996).

End of clause)

Attachment to FAR Clause 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES AND EXECUTIVE ORDERS--COMMERCIAL ITEMS (JUNE 1998).

ADDITIONAL CLAUSES INCORPORATED BY REFERENCE

This contract incorporates the following clauses by reference, with the same force and effect as if it were given in full text. Upon request, the Contracting Officer will make its text available.

FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSE:

52.215-42 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data--Modifications. (JAN 1997).

52.217-7 Option for Increased Quantity - Separately Priced Line Items (MAR 1989).

52.219-6 Notice of Total Small Business Set-Aside (JUL 1996)

52.242-15 Stop Work Order (AUGUST 1989)

DEPARTMENT OF HEALTH AND HUMAN SERVICES ACQUISITION

REGULATIONS/PUBLIC HEALTH SERVICE ACQUISITION REGULATIONS
(PHSAR) (48 CFR CHAPTER 3) CLAUSES:

SAR 352.270-5, Key Personnel (APRIL 1984).

S 352.280-2b, Care of Live Vertebrate Animals (OCTOBER 1986).

Appendix 5 - CBD NOTE 26:

Based upon market research, the Government is not using the policies contained in Part 12, Acquisition of Commercial Items, in its solicitation for the described supplies or services. However, interested persons may identify to the contracting officer their interest and ability to satisfy the Government's requirement with a commercial item within 15 days of his notice.

MANUAL CHAPTERS
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